

BEFORE THE PERSONNEL APPEALS BOARD

STATE OF WASHINGTON

CHARLES TYSON,

Appellant,

v.

DEPARTMENT OF CORRECTIONS,

Respondent.

) Case No. DISM-02-0040

)  
) FINDINGS OF FACT, CONCLUSIONS OF  
) LAW AND ORDER OF THE BOARD

I. INTRODUCTION

1.1 **Hearing.** This appeal came on for hearing before the Personnel Appeals Board, GERALD L. MORGEN, Vice Chair, and BUSSE NUTLEY, Member. The hearing was held at the office of the Personnel Appeals Board in Olympia, Washington, on June 10, 2003. WALTER T. HUBBARD, Chair, did not participate in the hearing or in the decision in this matter.

1.2 **Appearances.** Appellant Charles Tyson was present and was represented by Spencer Thal, General Counsel for Teamsters Local 117. Morgan Damerow, Assistant Attorney General, represented Respondent Department of Corrections.

1.3 **Nature of Appeal.** This is an appeal from a disciplinary sanction of dismissal for neglect of duty, gross misconduct and willful violation of agency policies. Respondent alleges that Appellant 1) pulled a knife out from his pocket, unfolded it and made stabbing movements toward a co-worker and 2) failed to notify the department that he had been arrested and booked into jail.

1.4 **Citations Discussed.** WAC 358-30-170; Baker v. Dep't of Corrections, PAB No. D82-084 (1983).

## II. FINDINGS OF FACT

2.1 Appellant Charles Tyson was a permanent employee for Respondent Department of Corrections. Appellant and Respondent are subject to Chapters 41.06 and 41.64 RCW and the rules promulgated thereunder, Titles 356 and 358 WAC. Appellant filed a timely appeal with the Personnel Appeals Board on May 29, 2002.

2.2 By letter dated May 16, 2002, Alice Payne, Superintendent of McNeil Island Corrections Center, informed Appellant of his immediate suspension, effective May 16, 2002, followed by dismissal effective at the end of his shift on May 30, 2002. Ms. Payne charged Appellant with neglect of duty, gross misconduct and willful violation of agency policy. Ms. Payne specifically alleged that 1) on November 27, 2001, Appellant, while riding in a state vehicle with two other employees, pulled out a knife from his pocket, unfolded it and made stabbing movements toward employee David McCaslin, and 2) failed to notify the department within 24 hours, as required by policy, that he had been arrested and booked into jail on September 16, 2000.

2.3 Appellant became a permanent employee with the Department of Correction in 1991. At the time of his termination, Appellant was employed as a Truck Driver 3. Appellant has a good performance record and has had no previous disciplines of any type.

### **Allegation #1**

2.4 On November 27, 2001, Appellant, David McCaslin, an intermittent truck driver, and Truck Driver Michael McNair were riding in an agency pick-up truck. Mr. McNair was driving, Mr. McCaslin was sitting in the right front passenger seat and Appellant was sitting in the rear seat directly behind Mr. McCaslin. Mr. McCaslin was sitting with his body angled slightly to the left,

1 glancing over his left shoulder, while engaged in conversation with Appellant. Appellant asked Mr.  
2 McCaslin for a barge schedule. Mr. McCaslin responded something to the effect of, "You got five  
3 bucks?" Mr. McCaslin testified that Appellant reached into his right pocket with his right hand,  
4 pulled out a knife, opened the blade with his left hand while saying, "I've got your five bucks right  
5 here." Mr. McCaslin also testified that Appellant "made a movement with his right hand towards  
6 the seat," and he estimated that the knife came within two to three inches of him. Mr. McCaslin  
7 remained silent and he testified that he did not outwardly react to the situation because he was in  
8 "shock."

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10 2.5 Mr. McNair testified that he heard Appellant ask Mr. McCaslin for a barge schedule. The  
11 ensuing exchange between Appellant and Mr. McCaslin did not strike Mr. McNair as anything out  
12 of ordinary conversation. Mr. McNair did not hear Appellant make a threatening statement to Mr.  
13 McCaslin nor did he see Appellant holding a knife or make a threatening motion toward Mr.  
14 McCaslin. Further, Mr. McNair did not notice a change in Mr. McCaslin's demeanor nor did he  
15 notice any kind of an unusual reaction by Mr. McCaslin.

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17 2.6 Appellant denies that he pulled a knife or used it to threaten Mr. McCaslin.  
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19 2.7 On December 3, 2001, Mr. McCaslin made the claim that Appellant pulled a knife on him.  
20 In a handwritten incident report dated December 3, 2001, Mr. McCaslin wrote that Appellant  
21 "reached in his pocket, pulled out his pocket knife, folded the blade out and pointed it at me and  
22 made a stabbing motion within 1-2 [inches] from my side. ..." In a second typewritten statement  
23 also dated December 3, Mr. McCaslin wrote that Appellant "reached in his left front pant pocket  
24 and pulled out a pocket knife (approx. 4 in. total length), folded out the blade 3 inches in length and  
25 made a lunge toward me between the seat and the pillar of the truck, coming within 1-2 inches from  
26 my body."

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2 2.8 After listening to the testimony of Appellant, Mr. McNair and Mr. McCaslin, and after  
3 reviewing the exhibits, including the department's investigative results into the allegation, we find  
4 significant inconsistencies in Mr. McCaslin's retelling of the November 27 event. These  
5 inconsistencies include whether Appellant used his left or right hand to pull out the knife, whether  
6 Appellant made the stabbing movements directly toward Mr. McCaslin or toward the back of the  
7 front passenger seat, and whether Mr. McCaslin could have seen a movement made toward the right  
8 of his body when his head was turned to the left. We have also viewed the same truck in which the  
9 alleged incident occurred, and we find that Appellant's fist could not have fit in the space between  
10 the front seat and the side of the truck. Finally, we do not find credible that Mr. McCaslin would  
11 have absolutely no outward expression of surprise to a threat of harm and then wait six days to  
12 report such a significant event. Furthermore, Mr. McNair's testimony supports that nothing out of  
13 the ordinary occurred between Appellant and Mr. McCaslin during the drive.

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15 **Allegation #2**

16 2.9 During the investigation into the allegation that Appellant threatened Mr. McCaslin with a  
17 pocket knife, the agency learned that Appellant had been arrested and booked into the Pierce  
18 County Jail on September 16, 2000. According to the collective bargaining agreement between the  
19 Department of Corrections and the General Teamsters Local #313, employees are required to  
20 "report all arrests to their appointing authority, or designee, within 24 hours or prior to their  
21 scheduled work shift, whichever occurs first." Richard Gerren, Appellant's supervisor, had issued a  
22 directive to his employees that they notify him at his home telephone number of any absences prior  
23 to the beginning of their shift.

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25 2.10 Appellant testified that pursuant to Mr. Gerren's directive, he called Mr. Gerren's home  
26 twice on Saturday, September 16, 2000. The first message was to inform Mr. Gerren that he was ill

1 and would be off on Monday and Tuesday. Later that day, Appellant left a second message  
2 informing Mr. Gerren that he had been arrested and was being booked into jail.

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4 2.11 Mr. Gerren testified that Appellant did not call and inform him of this arrest nor did  
5 Appellant inform him of the arrest at any time. Mr. Gerren recalled that Appellant left one message  
6 informing him that he would not be to work due to illness, however, he did not receive a second  
7 message from Appellant.

8  
9 2.12 We do not question Mr. Gerren's veracity, however, Mr. Gerren was not the only individual  
10 who had access to his home answering machine. Respondent has failed to provide a preponderance  
11 of evidence to support that Appellant failed to leave a second message for Mr. Gerren reporting his  
12 arrest.

13  
14 2.13 Superintendent Alice Payne was Appellant's appointing authority when the discipline was  
15 imposed. On February 27, 2002, Ms. Payne met with Appellant and Appellant's union  
16 representative to discuss the allegations of misconduct. During the meeting, Appellant denied that  
17 he pulled a knife out on Mr. McCaslin. Appellant claimed that Mr. McCaslin's story may have  
18 been racially motivated, and he claimed that he had overheard Mr. McCaslin make racially  
19 inappropriate remarks. Ms. Payne subsequently met with Mr. McCaslin, who denied making any  
20 racial statements. After considering Appellant's response to the charges, Ms. Payne determined  
21 that Mr. McCaslin was more credible, and she concluded that Appellant had engaged in misconduct  
22 when he pulled out a knife and made stabbing motions toward Mr. McCaslin. Ms. Payne did not  
23 find Appellant credible when he asserted that he had called Mr. Gerren's home to report his arrest.

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25 2.14 Ms. Payne concluded that Appellant neglected his duty to abide by the DOC code of ethics  
26 and that he violated the department's Workplace Violence policy. Ms. Payne also determined that

1 Appellant neglected his duty to report his arrest within 24 hours as required by the Collective  
2 Bargaining Agreement.

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4 2.15 In determining the level of discipline, Ms. Payne did not consider Appellant's length of  
5 service as a mitigating factor because she found his conduct to be of such a serious nature that  
6 termination was the only appropriate sanction to keep the workplace safe for others.

### 8 **III. ARGUMENTS OF THE PARTIES**

9 3.1 Respondent argues that Mr. McCaslin is credible and has been consistent in describing the  
10 November 27 events. Respondent asserts that there was no motive on Mr. McCaslin's part to  
11 fabricate the story against Appellant. Respondent argues that Appellant is not credible and that the  
12 superintendent looked into his claims of racism but found they were not supported. Respondent  
13 argues that Appellant also neglected his duty and violated agency policy when he failed to notify  
14 the department of his arrest on September 16, 2000. Respondent argues that Appellant's  
15 misconduct warrants termination.

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17 3.2 Appellant denies that he pulled a knife on Mr. McCaslin, and that his denial is more credible  
18 because Mr. McNair, a neutral third party who was present at the time, noted nothing unusual or  
19 significant during the truck drive. Appellant asserts that Mr. McCaslin is not credible because he  
20 failed to immediately report the incident. Appellant contends that Mr. McCaslin's credibility  
21 should be further questioned because his version of the events has not been consistent and because  
22 Mr. McCaslin, who was an intermittent at the time, was later placed in Appellant's former position.  
23 Appellant further argues that he did place a second call to Mr. Gerren's home, and therefore,  
24 complied with his duty to report his arrest.

1 **IV. CONCLUSIONS OF LAW**

2 4.1 The Personnel Appeals Board has jurisdiction over the parties and the subject matter.

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4 4.2 In a hearing on appeal from a disciplinary action, Respondent has the burden of supporting  
5 the charges upon which the action was initiated by proving by a preponderance of the credible  
6 evidence that Appellant committed the offenses set forth in the disciplinary letter and that the  
7 sanction was appropriate under the facts and circumstances. WAC 358-30-170; Baker v. Dep't of  
8 Corrections, PAB No. D82-084 (1983).

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10 4.3 Respondent has failed to meet its burden of proving by a preponderance of the credible  
11 evidence that Appellant pulled out a knife from his pocket and made stabbing movements toward  
12 Mr. McCaslin. Respondent has also failed to meet its burden of proving by a preponderance of the  
13 credible evidence that Appellant failed to notify his supervisor of his arrest on September 16, 2000  
14 within a 24-hour period. Therefore, the appeal of Charles W. Tyson should be granted, and he  
15 should be fully reinstated.

16 **V. ORDER**

17 NOW, THEREFORE, IT IS HEREBY ORDERED that the appeal of Charles Tyson is granted.

18  
19 DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2003.

20  
21 WASHINGTON STATE PERSONNEL APPEALS BOARD

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23 \_\_\_\_\_  
24 Gerald L. Morgen, Vice Chair

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26 Busse Nutley, Member

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